

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
LITIGATION

No. M 07-1827 SI  
MDL No. 1827

This Order Relates To:

No. C 11-3856 SI

SCHULTZE AGENCY SERVICES, LLC,

**ORDER DENYING NEC DEFENDANTS'  
MOTION TO DISMISS**

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

Defendants NEC Corporation, NEC LCD Technologies, Ltd., NEC Electronics America, Inc., NEC Corporation of America, Inc., and NEC Display Solutions of America, Inc. (collectively, "NEC") have filed a motion to dismiss the first amended complaint of plaintiff Schultze Agency Services, LLC ("Tweeter"). Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and therefore VACATES the hearing currently scheduled for February 24, 2012. Having considered the parties' papers, and for good cause appearing, the Court hereby DENIES NEC's motion.

This Court has already determined that allegations substantially similar to those contained in Tweeter's complaint are sufficient to state a claim against the NEC entities. *See, e.g.*, Order Granting in Part NEC Defendants' Motion to Dismiss, Master Docket No. 4591 (January 18, 2012); Order Granting in Part Defendants' Motions to Dismiss, Master Docket No. 4601, at 6-7 (January 18, 2012). Tweeter's allegations against NEC are as detailed as the allegations the Court found sufficient in those

1 cases. *See, e.g.*, FAC at ¶¶136-139, 141. Accordingly, the Court finds Tweeter’s allegations adequate  
2 to state a claim against NEC.

3 NEC argues that, to the extent plaintiff’s allegations suggest it conspired to fix prices, they show  
4 at best a bilateral conspiracy. NEC claims that plaintiff’s limited allegations do not establish that NEC  
5 joined “a worldwide conspiracy that lasted ten years from 1996 to 2006 and involved panels of every  
6 single size and format, in addition to finished products.” Reply at 8. It contends that the only  
7 conspiracy it plausibly could have joined is a limited, bilateral conspiracy.

8 The Court does not agree. Unfortunately for NEC, this case involves a well-documented,  
9 industry-wide conspiracy. Given the specific, compelling allegations that such a broad conspiracy  
10 existed, Tweeter’s minimal allegations of NEC’s participation are sufficient to state a claim. None of  
11 the cases NEC relies on are to the contrary. Each of those cases involved inadequate allegations of the  
12 conspiracy itself, not one party’s participation. *See, e.g., In re Optical Disk Drive Antitrust Litig.*, 2011  
13 WL 3894376, at \*9 (N.D. Cal., August 3, 2011) (holding that allegations of isolated occurrences of bid  
14 rigging were “a far cry from establishing plausibility for a broad six year continuing agreement among  
15 all defendants”); *Howard Hess Dental Labs. Inc. v. Dentsply Int’l, Inc.*, 602 F.3d 237, 254-57 (3rd Cir.  
16 2010) (“[W]e conclude that the amended complaint lacks any allegation of an agreement among the  
17 Dealers themselves . . . .”); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 768 F. Supp. 2d 961, 972  
18 (N.D. Iowa 2011) (finding that isolated guilty pleas to charges of price-fixing could not support  
19 inference that a wider conspiracy existed); *Precision Assocs., Inc. v. Panalpina World Transport*  
20 *(Holding) Ltd.*, 2011 WL 7053807, at \*27 (E.D.N.Y., Jan. 4, 2011) (“The Complaint is silent as to how,  
21 when, or where these sixty-five defendants or the conduct identified in the 10 local conspiracy claims  
22 became connected to each other into one global conspiracy connected by common actors, methods and  
23 goals.”).

24 It may be that NEC never joined a conspiracy, that it joined a limited, bilateral conspiracy, or  
25 that it joined the full conspiracy alleged in Tweeter’s complaint. Plaintiff’s allegations need not  
26 establish which of these is correct; its allegations are sufficient to permit it to explore the question.

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1           Accordingly, the Court DENIES NEC's motion to dismiss Tweeter's FAC. Docket No. 4524  
2 in 07-1827; Docket No. 37 in 11-3856.

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4           **IT IS SO ORDERED.**

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6 Dated: February 23, 2012



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SUSAN ILLSTON  
United States District Judge